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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

10 GOLDEN SCORPIO CORP., an Arizona corporation,) No. CV-08-1781-PHX-GMS
11 Plaintiff,)
12 vs.)
13 STEEL HORSE SALOON I, et al.,)
14 Defendants.)
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ORDER

17 Pending before the Court is the Motion for Default Judgment of Plaintiff Golden
18 Scorpio Corp. (Dkt. # 72.) In the motion, Plaintiff requests an entry of judgment against
19 defendant Steel Horse Saloon V. (*See id.*) For the reasons set forth below, the Court denies
20 Plaintiff's motion and dismisses Defendant Steel Horse Saloon V from the action.

21 **BACKGROUND**

22 Plaintiff Golden Scorpio is an Arizona corporation that operates a restaurant and bar
23 under the name STEEL HORSE. Since 1997, Plaintiff has used STEEL HORSE as a
24 common law trademark in relation to its restaurant and bar services. On October 19, 2004,
25 the United States Patent and Trademark Office registered the "STEEL HORSE with
26 motorcycle design" service mark to Plaintiff for restaurant services.

27 Defendant Steel Horse Saloon V is a business entity of an unknown nature, that
28 allegedly operated a restaurant/bar under the trade name STEELHORSE SALOON in

1 Marion, Ohio, during a five-year period commencing around the year 2000.¹ (See Dkt. # 72
2 at 12 (“Defendant STEEL HORSE SALOON V reigned during a five-year tenure.”); Dkt.
3 # 76 Ex. B (State of Ohio Certificate of Registration of the trade name STEELHORSE
4 SALOON, indicating a date of first use of February 15, 2000).) The restaurant/bar was
5 operated under the STEELHORSE SALOON trade name, which was registered to Debra
6 Coble, a resident of Ohio. (*Id.*)

7 On September 29, 2009, Plaintiff sued Defendant Steel Horse Saloon V along with
8 twelve other business entities spread across the United States which allegedly also used the
9 STEEL HORSE mark, alleging federal and common law trademark infringement, unfair
10 competition, and trademark dilution. (See Dkt. # 1.) In the Complaint, Plaintiff alleges that
11 Defendant Steel Horse Saloon V “has its business advertised on the internet at
12 <http://www.clubplanet.com/Venues/108438/Marion/Steel-Horse-Saloon>, under the name
13 Steel Horse Saloon,” and that this advertising is available to Internet users in Arizona. (*Id.*
14 ¶ 18 and Ex. 10.) The “advertisement” appearing on that website contains only the Ohio
15 address, Ohio telephone number, and some basic information about Defendant Steel Horse
16 Saloon V.² (See *id.* Ex. 10.)

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19 ¹Plaintiff presents no evidence that Defendant Steel Horse Saloon V is currently
20 operating a restaurant/bar in Marion, Ohio. The only evidence presented on the matter is that
21 the Ohio SteelHorse Saloon restaurant has ceased operating. (See Affidavit Joanna L.
22 Yogerst, Dkt. # 76 at 16 (stating that Ms. Yogerst heard Greg Coble state that “he recently
23 sold his Steel Horse Saloon under a condemnation proceeding.”).) Despite the seemingly
24 inadmissible nature of this hearsay evidence, Plaintiff does not dispute the fact that
Defendant Steel Horse Saloon V has ceased operating a restaurant/bar under the trade name
SteelHorse Saloon.

25 ²It is not apparent that Defendant Steel Horse Saloon V is responsible for the
information provided on the <http://www.clubplanet.com> website. Appearing below
26 Defendant Steel Horse Saloon V’s address and phone number on the website is the following
language: “Is This Your Business?” (Dkt. # 1 Ex. 10.) The Court, however, need not resolve
27 this question and will presume that Defendant Steel Horse Saloon V is responsible for the
28 information.

1 On February 3, 2009, default was entered by the Clerk of the Court against Defendant
2 Steel Horse Saloon V due to its failure to plead or otherwise defend. (Dkt. # 65.) On
3 February 27, 2009, Plaintiff filed its Motion for Default Judgment seeking monetary and
4 injunctive relief against the Defendant Steel Horse Saloon V. (Dkt. # 72.)

5 On March 26, 2009, the Court scheduled an evidentiary hearing and instructed
6 Plaintiff “to be prepared to present the evidentiary basis supporting service on and personal
7 jurisdiction over Defendant Steel Horse Saloon V.” (Dkt. # 75 at 3.) Although Plaintiff filed
8 one affidavit and one exhibit on March 30, 2009 (Dkt. # 76), Plaintiff did not present any
9 further evidence supporting service of process or personal jurisdiction at the evidentiary
10 hearing on April 2, 2009. (See Dkt. # 77.)

DISCUSSION

12 || I. Service of Process

13 “In deciding whether to grant default judgment, a court must first assess the adequacy
14 of the service of process on the party against whom default is requested.” *Bank of the West*
15 *v. RMA Lumber, Inc.*, No. C 07-16469, 2008 WL 1474650, at *2 (N.D. Cal. June 17, 2008)
16 (quotation omitted). “A federal court does not have jurisdiction over a defendant unless the
17 defendant has been served properly[.]” *Direct Mail Specialists, Inc. v. Eclat Computerized*
18 *Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988) (citing *Jackson v. Hayakawa*, 682 F.2d 1344,
19 1347 (9th Cir. 1982)); *see also Mason v. Genisco Tech. Corp.*, 960 F.2d 849, 851 (9th Cir.
20 1992) (“A person is not bound by a judgment in a litigation to which he or she has not been
21 made a party by service of process.”); *Hilgeman v. Am. Mortgage Sec., Inc.*, 196 Ariz. 215,
22 218, 994 P.2d 1030, 1033 (Ct. App. 2000) (“If a defendant is not properly served with
23 process, any resulting judgment is void and must be vacated upon request.”) (citations
24 omitted).

In this case, there is no dispute that on January 6, 2009, Plaintiff effectuated service of process upon Greg Coble, the husband of Debbie Coble, while the couple were temporarily in Arizona. (*See* Dkt. # 61.) Nevertheless, Mr. Coble, in his individual capacity,

1 is not a defendant in the present suit. Plaintiff argues only that Mr. Coble was an agent of
 2 Defendant Steel Horse Saloon V when he was served.³ (Dkt. # 76 at 9.)

3 Federal Rule of Civil Procedure 4(h) requires that:

4 [A] domestic or foreign corporation, or a partnership or other
 5 unincorporated association that is subject to suit under a
 6 common name, must be served . . . in the manner prescribed by
 7 Rule 4(e)(1) for serving an individual; or . . . by delivering a
 copy of the summons and of the complaint to an officer, a
 managing or general agent, or any other agent authorized by
 appointment or by law to receive service of process

8 Rule 4(e)(1) permits service to be effectuated in compliance with state service of
 9 process law. Fed. R. Civ. P. 4(e). Plaintiff, however, does not argue that service was
 10 accomplished pursuant to Arizona law. Nor does Plaintiff argue that Mr. Coble was an agent
 11 authorized by appointment or by law to receive service of process. Service of process upon
 12 Defendant Steel Horse Saloon V is effective, then, only if Mr. Coble is an officer, a
 13 managing agent, or general agent of Defendant.

14 It appears from Ms. Yogerst's affidavit that the business entity Steel Horse Saloon V
 15 is no longer operating a restaurant/bar under the trade name SteelHorse Saloon.
 16 Consequently, it is unclear whether the business entity Steel Horse Saloon V is even in
 17 existence at the present time with officers and agents capable of being served. At the
 18 evidentiary hearing, Plaintiff failed to clarify the issue, instead representing to the Court that
 19 Plaintiff does not have much information about Steel Horse Saloon V.

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22 ³To the extent that Plaintiff could rely on an alternative theory supporting effective
 23 service of process, it is waived for failure to present the argument to the Court. *Indep.*
Towers of Wash. v. Washington, 350 F.3d 925, 929 (9th Cir. 2003) (“Our circuit has
 24 repeatedly admonished that we cannot manufacture arguments [for a party] . . . Rather, we
 25 review only issues which are argued *specifically and distinctly . . .*”) (internal quotations
 26 omitted and emphasis added). If an argument is not properly argued and explained, the
 27 argument is waived. *See, e.g., id.* at 929-30 (holding that a party’s argument was waived
 28 because “[i]nstead of making legal arguments,” the party simply made a “bold assertion” of
 error, with “little if any analysis to assist the court in evaluating its legal challenge”); *Hibbs*
v. Dep’t of Human Res., 273 F.3d 844, 873 n.34 (9th Cir. 2001) (finding that an assertion of
 error was “too undeveloped to be capable of assessment” and thus waived).

1 Regardless of whether Steel Horse Saloon V is presently in existence, however,
2 Plaintiff fails to present evidence sufficient to establish that Mr. Coble is either an officer,
3 general agent, or managing agent of Defendant. The only evidence submitted at all by
4 Plaintiff is the affidavit of Joanna Yogerst and the State of Ohio Application and Certificate
5 of trade name registration indicating that Debra Cole is the applicant and registrant of the
6 SteelHorse Saloon trade name. (*See* Dkt. # 76 Ex. A, B.) The fact that Ms. Coble is the
7 registrant of the SteelHorse Saloon trade name, however, is not probative of whether Mr.
8 Coble is an officer, general agent, or managing agent of Defendant Steel Horse Saloon V.
9 Additionally, Ms. Yogerst's affidavit contains no evidence bearing on whether Mr. Coble is
10 an officer, general agent, or managing agent of Defendant. The only evidence that seems to
11 bear on the matter is Mr. Yogerst's statements that she "heard Greg Coble say . . . [that the
12 Cobles] owned a Steel Horse Saloon for about five years in Marion, Ohio." (Dkt. # 76 Ex.
13 A ¶ 3.) But she further specifies that Mr. Coble said that he had previously sold the entity
14 pursuant to a condemnation proceeding. If so, it is not apparent how he could still be an
15 officer, general agent, or managing agent as of January 6, 2009. Even if Mr. Coble's
16 statement were admissible, therefore, such a statement is insufficient to support the
17 conclusion that Greg Coble is or was an officer, general agent, or managing agent of
18 Defendant.

19 In sum, despite the briefing and evidence submitted on the matter, Plaintiff has yet to
20 demonstrate service of process of the summons and complaint in accordance with the
21 requirements of Federal Rule of Civil Procedure 4. Consequently, an entry of default
22 judgment against Defendant would be improper.

23 **II. Jurisdictional Standard for Default Judgment and Personal Jurisdiction**

24 Alternatively, an entry of default judgment against Defendant would be improper
25 because the Court lacks personal jurisdiction over the business entity Steel Horse Saloon V.
26 In the Complaint, Plaintiff appears to allege that the Defendant's advertising alone gives rise
27 to minimum contacts between Defendant and the State of Arizona sufficient for this Court
28 to exercise personal jurisdiction. However, in light of the Court's prior ruling on that matter

1 as it pertains to similar defendants (*see* Dkt. # 69), Plaintiff now appears to assert that the
2 Court may exercise general jurisdiction over Defendant Steel Horse Saloon V due to Greg
3 and Debbie Coble's contacts with Arizona.

4 When considering whether to enter a default judgment, a court has "an affirmative
5 duty to look into its jurisdiction over both the subject matter and the parties." *In re Tuli*, 172
6 F.3d 707, 712 (9th Cir. 1999) ("To avoid entering a default judgment that can later be
7 successfully attacked as void, a court should determine whether it has the power, i.e., the
8 jurisdiction, to enter judgment in the first place."); *see also Williams v. Life Sav. & Loan*, 802
9 F.2d 1200, 1203 (10th Cir. 1986) ("In reviewing its personal jurisdiction . . . the court
10 exercises its responsibility to determine that it has the power to enter the default judgment.").
11 "[W]hen a court is considering whether to enter a default judgment, it may dismiss an action
12 *sua sponte* for lack of personal jurisdiction." *In re Tuli*, 172 F.3d at 712. Where there are
13 questions about the existence of personal jurisdiction, however, a court should allow the
14 plaintiff the opportunity to establish that jurisdiction is proper. *Id.* at 713. Accordingly, on
15 April 2, 2009, the Court conducted an evidentiary hearing in which Plaintiff was directed to
16 "be prepared to present the evidentiary basis supporting . . . personal jurisdiction over
17 Defendant Steel Horse Saloon V." (Dkt. # 75 at 3.) Despite submitting an affidavit and an
18 exhibit prior to the hearing, Plaintiff did not present any additional evidence at the hearing
19 supporting jurisdiction over Defendant.

20 "The party seeking to invoke the court's jurisdiction bears the burden of establishing
21 that jurisdiction exists." *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986) (citing *Data
Disc, Inc. v. Sys. Tech. Assocs.*, 557 F.2d 1280, 1285 (9th Cir. 1977)). "Personal jurisdiction
23 over an out-of-state defendant is appropriate if the relevant state's long arm-statute permits
24 the assertion of jurisdiction without violating federal due process." *Schwarzenegger v. Fred
Martin Motor Co.*, 374 F.3d 797, 800-01 (9th Cir. 2004). Because Arizona's long arm statute
26 is co-extensive with federal due process requirements, the jurisdictional analyses under
27 Arizona law and federal due process are the same. *See id.* at 801; *Terracom v. Valley Nat'l
Bank*, 49 F.3d 555, 559 (9th Cir. 1995); Ariz. R. Civ. P. 4.2(a). Therefore, absent traditional

1 bases for personal jurisdiction (*i.e.*, physical presence,⁴ domicile, and consent), the Due
 2 Process Clause requires that nonresident defendants have certain “minimum contacts” with
 3 the forum state such that the exercise of personal jurisdiction does not offend traditional
 4 notions of fair play and substantial justice. *See Int'l Shoe Co. v. Washington*, 326 U.S. 310,
 5 316 (1945).

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9 ⁴Based on the fact that Mr. Coble was served with the summons and complaint while
 10 physically present in Arizona, the Court alerted Plaintiff to the physical presence theory for
 11 establishing personal jurisdiction, which was most recently set forth by the Supreme Court
 12 in *Burnham v. Super. Court of Cal.*, 495 U.S. 604, 619 (1990). (Dkt. # 75 at 3.) The Court
 13 directed Plaintiff to file a memorandum with the Court “providing legal authority supporting
 14 . . . the conclusion that service upon a business entity’s owners in a state is sufficient to grant
 15 personal jurisdiction over the business entity itself” under the physical presence doctrine.
(Id.) In its memorandum, however, Plaintiff failed to make a single argument or provide any
 16 legal authority supporting application of the physical presence doctrine to this case.
 17 Consequently, to the extent that Plaintiff could have argued for its application, those
 18 arguments are waived. *See supra* n.3.

19 Regardless, it appears that the physical presence theory is limited to circumstances
 20 where service of process was made upon a natural person who was physically within the
 21 forum state when served and who is himself or herself a defendant in the action. *See*
Burnham, 495 U.S. at 619 (holding that, at least with respect to natural persons, in-state
 22 service of process always creates general jurisdiction over the person served); *Nehemiah v.*
Athletics Cong. of the U.S.A., 765 F.2d 42, 47 (3d Cir. 1985) (holding, pre-*Burnham*, that “it
 23 is undisputed that mere service on a corporate agent cannot establish personal jurisdiction
 24 without a minimum contact inquiry” and that “even if the [Supreme Court] were to
 25 acknowledge the . . . [transient jurisdiction] doctrine and thereby carve a *sui generis* niche
 26 over the individual who purposefully enters the jurisdiction and is served,” it would not
 27 extend to permitting personal jurisdiction over business entities whose agent is physically
 28 present in a forum when served); *C.S.B. Commodities, Inc. v. Urban Trend (HK) Ltd.*, No.
 08 cv 1548, 2009 WL 57455, at *10 (N.D. Ill. Jan. 7, 2009) (collecting cases in which courts
 have “come to the conclusion that service of process on an agent of a foreign corporation is
 insufficient, by itself to confer personal jurisdiction”); 4A Charles Alan Wright & Arthur R.
 Miller, *Federal Practice and Procedure* § 1103 (3d ed. 2002) (“Service made upon a
 corporation, partnership, or other unincorporated association simply by delivering process
 to a corporate or comparable officer who happens to reside or be physically present in the
 state at the time the documents are served will not be effective to establish in personam
 jurisdiction, unless that entity also is doing business so as to be amenable to service of
 process and the assertion of jurisdiction in the forum state.”).

1 “In determining whether a defendant had minimum contacts with the forum state such
2 that the exercise of jurisdiction over the defendant would not offend the Due Process Clause,
3 courts focus on ‘the relationship among the defendant, the forum, and the litigation.’”
4 *Brink v. First Credit Res.*, 57 F. Supp. 2d 848, 860 (D. Ariz. 1999) (citing *Shaffer v. Heitner*,
5 433 U.S. 186, 204 (1977)). If a court determines that a defendant’s contacts with the forum
6 state are sufficient to satisfy the Due Process Clause, then the court must exercise either
7 “general” or “specific” jurisdiction over the defendant. *See Helicopteros Nacionales de*
8 *Colombia v. Hall*, 466 U.S. 408, 414-15 nn.8-9 (1984); *Ziegler v. Indian River County*, 64
9 F.3d 470, 473 (9th Cir. 1995). General jurisdiction refers to the authority of a court to
10 exercise jurisdiction even where the cause of action is unrelated to the defendant’s contacts
11 with the forum. *Helicopteros*, 466 U.S. at 408. Specific jurisdiction refers to the authority
12 of a court to exercise jurisdiction when a suit arises out of or is related to the defendant’s
13 contacts with the forum. *Id.* The nature of the defendant’s contacts with the forum state,
14 therefore, will determine whether the court exercises general or specific jurisdiction over the
15 defendant. *Id.*

16 **A. General Jurisdiction**

17 Plaintiff appears to contend that the Court may exercise general jurisdiction over
18 Defendant because “this Defendant’s proprietors were served in Phoenix, AZ [and] admitted
19 to Plaintiff’s personnel to frequently visiting here to visit family and property.” (Dkt. # 71
20 at 9.)

21 A court may assert general jurisdiction over a defendant if the defendant engages in
22 “substantial” or “continuous and systematic” business activities, *Helicopteros*, 466 U.S. at
23 416 (citing *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 446-47 (1952)), that
24 “approximate physical presence” in the forum state, *Bancroft & Masters, Inc. v. Augusta Nat.*
25 *Inc.*, 223 F.3d 1082, 1087 (9th Cir. 2000) (explaining that the following factors are to be
26 considered in determining whether general jurisdiction may be exercised: “whether defendant
27 makes sales, solicits or engages in business in the state, serves the state’s markets, designates
28 an agent for service of process, holds a license, or is incorporated there”). *See also Brand*

1 *v. Menlove Dodge*, 796 F.2d 1070, 1073 (9th Cir. 1986) (collecting cases where general
 2 jurisdiction was denied despite the defendants' significant contacts with the forum states)).
 3 Here, Plaintiff argues in support of general jurisdiction over the defaulted defendants,
 4 concluding that the facts show "continuous and systematic contacts with the forum state."
 5 (Dkt. # 72 at 9.)

6 The only jurisdictional facts Plaintiff alleges or for which it provides evidence are: (1)
 7 Defendant advertised on the Internet and its advertising was available to Internet users in
 8 Arizona; (2) Defendant's alleged proprietors, Greg and Debbie Coble, visit family and
 9 property in Arizona; and (3) the Cobles used to live in Arizona.⁵ (*See* Dkt. ## 1, 72.) It is
 10 uncontested, however, that Defendant's place of business was in Marion, Ohio, and Plaintiff
 11 does not allege that Defendant has ever engaged in business transactions or made sales in
 12 Arizona. Plaintiff does not allege or argue that Defendant owns property in Arizona, owes
 13 taxes in Arizona, or maintains offices, employees, telephone numbers, Post Office boxes or
 14 bank accounts in Arizona. Nor does Plaintiff allege or argue that Defendant is registered or
 15 licensed to conduct business in Arizona, or that it has designated an agent for service of
 16 process in Arizona. The Court cannot exercise general jurisdiction over Defendant because
 17 its contacts neither qualify as "substantial" nor "continuous and systematic" so as to
 18 approximate its physical presence in Arizona. Therefore, while Defendant may have
 19 facilitated advertising which was available in Arizona, it was not doing business in Arizona,
 20 and so while it may have "stepped through the door, there is no indication that [they have]
 21 sat down and made [themselves] at home." *Glencore Grain Rotterdam B.V. v. Shivnath Rai*
 22 *Harnarain Co.*, 284 F.3d 1114, 1125 (9th Cir. 2002); *see also Gator.Com Corp. v. L.L. Bean*,
 23 341 F.3d 1072, 1079 (9th Cir. 1997) ("This test requires both that the party in question

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 25 ⁵Despite the allegations that Greg and Debbie Coble are Defendant's "proprietors,"
 26 Plaintiff has failed to present admissible evidence to substantiate this contention. However,
 27 because this factual contention does not affect the Court's jurisdictional analysis, the Court
 28 declines to make any findings on the matter and will assume, for purposes of personal
 jurisdiction, that Greg and Debbie Coble had or have some sort of ownership interest in
 Defendant.

1 clearly do business over the Internet, and that the Internet business contacts with the forum
2 state be substantial or continuous and systematic.”) (citations and quotation omitted); *GTE*
3 *New Media Servs., Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1349-50 (D.C. Cir. 2000) (stating
4 that mere operation of an interactive website “does not by itself show any persistent course
5 of conduct by defendants in the [forum state]”).

6 This conclusion is unaffected by the minimal Arizona contacts of the Cobles. Even
7 if the Coble’s contacts could be imputed to Defendant Steel Horse Saloon V for purposes of
8 jurisdiction – a proposition that Plaintiff has failed to establish – they are not sufficient to
9 subject Defendant to general jurisdiction. Specifically, it is simply not relevant to the inquiry
10 whether the Cobles *used to* live in Arizona. Additionally, the Coble’s personal visits to see
11 family in Arizona and the Coble’s personal ownership of property in Arizona do not amount
12 to the “substantial” and “continuous and systematic” contacts necessary for the Court to
13 exercise general jurisdiction over Defendant.

14 Therefore, Plaintiff has not made a showing of jurisdictional facts sufficient for the
15 Court to exercise general jurisdiction over Defendant Steel Horse Saloon V.

16 **B. Specific Jurisdiction**

17 The allegations of the Complaint appear to premise personal jurisdiction solely on
18 Defendant’s alleged Internet advertising, which is available to Internet users in Arizona.
19 This basis, however, is insufficient to confer personal jurisdiction over Defendant Steel
20 Horse Saloon V for the same reason that it is insufficient to confer jurisdiction over the other
21 defendants previously dismissed in this matter. (*See* Dkt. # 69 (holding that passive Internet
22 advertising, absent evidence of express aiming of the advertising at Arizona, is an insufficient
23 basis for the Court to exercise specific jurisdiction).)

24 Plaintiff also contends that specific jurisdiction may be exercised over Defendant
25 because the Cobles “advertis[ed] ownership of a Steel Horse Saloon” when they visited
26 Arizona in January of 2009. Plaintiff argues that “Defendant[’s] agents’ visit advertising
27 ownership of a STEEL HORSE SALOON fits this jurisdictional definition, just as if these
28 agents of the Defendant were involved in [an] automobile accident . . . in Arizona during

1 their visit" (Dkt. # 76 at 7.) Nevertheless, in her affidavit, Ms. Yogerst states only that
 2 she heard Greg Coble say that "[The Cobles] owned a Steel Horse Saloon for about 5 years
 3 in Marion, Ohio." (Dkt. # 76 Ex. A ¶ 3.) Ms. Yogerst also states that she heard Mr. Coble
 4 say that "he recently sold his Steel Horse Saloon under a condemnation proceeding." (*Id.*
 5 Ex. A ¶4.) Plaintiff characterizes Mr. Coble's statements, which were made in Arizona, as
 6 an independent act of advertising sufficient on its own to impose liability under the Lanham
 7 Act and sufficient on its own to support personal jurisdiction in Arizona.

8 In the Ninth Circuit, specific jurisdiction may be exercised only if: (1) the defendant
 9 *purposefully avails* himself of the privileges of conducting activities in the forum, thereby
 10 invoking the benefits and protections of its laws, or purposely directs conduct at the forum
 11 that has *effects* in the forum; (2) the claim *arises out of* the defendant's forum-related
 12 activities; and (3) the exercise of jurisdiction comports with fair play and substantial justice;
 13 i.e., it is *reasonable*. *See Bancroft*, 223 F.3d at 1086-87 (citing *Cybersell, Inc. v. Cybersell,*
 14 *Inc.*, 130 F.3d 414, 417 (9th Cir. 1997)); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462,
 15 472-76 (1985).

16 Even if Mr. Coble's statement could be characterized as advertising (which is doubtful
 17 given that the statement seems to indicate that the Steel Horse Saloon in Marion, Ohio, is no
 18 longer in operation), and even if Mr. Coble's statement could somehow be imputed to
 19 Defendant Steel Horse Saloon V, it is insufficient to support personal jurisdiction over
 20 Defendant. First, Mr. Coble's statement is insufficient to constitute Defendant Steel Horse
 21 Saloon V's purposeful availment of the privileges of conducting business in Arizona. Nor
 22 would the exercise of jurisdiction on that basis comport with notions of fair play and
 23 substantial justice. Likewise, unlike the situation in which personal jurisdiction may be
 24 exercised over a non-resident negligent driver in Arizona for claims "arising out of" an
 25 automobile accident occurring in the state, Plaintiff's lawsuit cannot be said to "arise out of"
 26 Mr. Coble's comment, which was made over two months after the Complaint was filed.

27 Additionally, Mr. Coble's comment that he *used to* own a Steel Horse Saloon in Ohio
 28 seems to cut against both the notion that Mr. Coble *is* the authorized agent of such a business

1 and the notion that in January of 2009 Mr. Coble was advertising for the now-defunct
2 establishment by mentioning his previous ownership of it. During the evidentiary hearing,
3 Counsel asserted that in mentioning his past ownership of the business, Mr. Coble was using
4 the STEEL HORSE mark to solicit potential customers from Ohio present in Phoenix to
5 support Ohio-based teams in college bowl games. Nevertheless, it is difficult to understand
6 how Plaintiff could lose the business of Ohio residents, especially to the Cobles' now defunct
7 establishment.

8 In attempting to comprehend such arguments, the Court sympathizes with Alice, who
9 upon reading "Jabberwocky," observed: "[I]t's rather hard to understand! . . . Somehow it
10 seems to fill my head with ideas – only I don't exactly know what they are!" Lewis Carroll,
11 *Through the Looking-Glass and What Alice Found There* 30-31 (1899) (internal quotations
12 omitted). What such ideas are not, however, is any notion that Plaintiff has somehow
13 established specific jurisdiction over Defendant Steel Horse Saloon V predicated upon Mr.
14 Coble's comment.

15 In sum, Plaintiff has made no showing of jurisdictional facts sufficient for the Court
16 to exercise specific jurisdiction over Defendant Steel Horse Saloon V.

17 CONCLUSION

18 Plaintiff has not established either that Defendant Steel Horse Saloon V was properly
19 served or that the personal jurisdiction may be exercised over Defendant.

20 **IT IS THEREFORE ORDERED** that Plaintiff's Motion for Default Judgment (Dkt.
21 # 72) is **DENIED**.

22 **IT IS FURTHER ORDERED** that Defendant Steel Horse Saloon V is **DISMISSED**
23 for failure to serve and lack of personal jurisdiction.

24 **IT IS FURTHER ORDERED** that the Clerk of the Court is directed to mail a copy
25 of this Order to Greg and Debbie Coble at 893 Cheney Ave., Marion, OH 43302.

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1 **IT IS FURTHER ORDERED** that Plaintiff show cause as to why the Court should
2 not dismiss Defendants Steel Horse Saloon III, Steel Horse Pub & Grill, and The Steel Horse
3 Saloon I, pursuant to Federal Rule of Civil Procedure 4(m) for failure to timely serve.
4 Plaintiff is directed to file a memorandum doing so by **April 17, 2009**. Failure to respond
5 will be considered as consent to the dismissal of these parties.

6 DATED this 9th day of April, 2009.

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G. Murray Snow
9 United States District Judge

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